

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

PLM I

30492

FILE:

B-218140

DATE: February 22, 1985

MATTER OF:

Hauser Products Incorporated

DIGEST:

1. Bid on total small business set-aside from a small business concern which indicates that not all supplies to be furnished will be the product of a small business concern properly is rejected as nonresponsive because bidder would be free to furnish supplies from a large business and thus defeat the purpose of the set-aside.
2. Bid on total small business set-aside rejected as nonresponsive because bidder indicated that not all supplies to be furnished will be the product of a small business concern may not be cured or defect waived as a minor informality since responsiveness must be determined from material available at bid opening and postopening explanations cannot be considered to correct a nonresponsive bid.

Hauser Products Incorporated (Hauser) protests the rejection of its bid as nonresponsive under the Armament Munitions and Chemical Command (AMCCOM), U.S. Army Materiel Development Readiness Command, invitation for bids (IFB) No. DAAA09-85-B-0065, a small business set-aside for the purchase of tube and strap assemblies. Hauser's bid was rejected because it indicated that not all supplies to be furnished would be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

We dismiss the protest. We do so without obtaining a report from the contracting agency since it is clear from the information provided by Hauser that the protest is without legal merit. See ATD-American Co., B-217290, Jan. 23, 1985, 85-1 C.P.D. ¶ ____.

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The solicitation contained the usual Small Business Concern Representation. Hauser indicated in that representation that it was a small business concern, but that "not all supplies to be furnished will be manufactured or produced by a small business concern in the United States, its possessions or Puerto Rico." As a result, the contracting officer rejected the bid as nonresponsive.

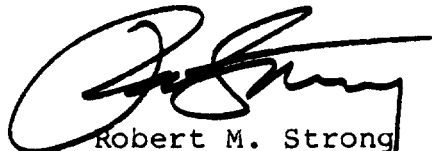
Hauser indicates that it completed the representation as it did because it read the words "all supplies" to mean all of the raw materials that are used in manufacturing the end item. Hauser therefore feels the solicitation provision is ambiguous and its misinterpretation in responding to the representation should be waived as a minor informality.

While we have held that the failure to complete the small business size status portion of the representation is a waivable minor informality, Extinguisher Service, Inc., B-214354, June 14, 1984, 84-1 C.P.D. ¶ 629, we have distinguished this from the second portion of the representation as to whether or not all supplies to be furnished will be manufactured or produced by a small business concern--which is a matter of bid responsiveness. Mechanical Mirror Works, Inc., B-210750.2, Oct. 20, 1983, 83-2 C.P.D. ¶ 467. Where a bid on a total small business set-aside fails to establish the legal obligation of the bidder to furnish supplies manufactured or produced by small business concerns, the bid is nonresponsive and must be rejected because a small business contractor would be free to provide the supplies from either small or large business manufacturers as its private business interests might dictate, thus defeating the intent of the set aside program. ATD-American Co., B-217290, supra. See also Wippette International Incorporated, B-216304, Sept. 18, 1984, 84-2 C.P.D. ¶ 322.

The responsiveness of the bid must be determined from the material available at bid opening, and postopening explanations cannot be considered to correct a nonresponsive bid, even if a lower price could be obtained by accepting the corrected bid. Basic Marine Inc., B-215236, June 5, 1984, 84-1 C.P.D. ¶ 603. Thus, information outside the bid itself may not be offered by the bidder after bid opening as a basis to waive or otherwise cure the bidder's failure to make the proper certification in the bid. Mechanical Mirror Works, Inc., B-210750.2, supra.

Accordingly, since Hauser's intent was not clearly ascertainable from the face of the bid, the contracting officer acted reasonably in rejecting the bid as nonresponsive.

The protest is dismissed.



Robert M. Strong

Deputy Associate General Counsel